

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COMMUNICATIONS SUPPLY
CORPORATION,

Plaintiff,

v.

ELECTRO PRODUCTS, INC.,

Defendant.

CASE NO. C06-829JLR

ORDER

I. INTRODUCTION

This matter comes before the court on a motion for summary judgment and request for entry of partial judgment from Communications Supply Corporation (“CSC”) (Dkt. # 10). Defendant Electro Products, Inc. (“Electro”) filed a response indicating that it does not oppose the motion. For the reasons stated below, the court GRANTS in part and DENIES in part CSC’s motion for summary judgment, and DENIES CSC’s request to enter partial judgment.

II. BACKGROUND & ANALYSIS

This case arises out of Electro’s sale of admittedly defective “patch panels” to CSC. CSC filed suit against Electro alleging five separate causes of action: breach of

1 contract, breach of express warranty, breach of implied warranty of merchantability,
2 negligent misrepresentation, and unjust enrichment. Compl. ¶¶ 20, 24, 28, 32, 35. CSC
3 now moves for summary judgment and requests that the court enter partial judgment for
4 direct damages in the amount of \$534,370.55. This figure represents CSC's out-of-
5 pocket expenses incurred in the process of replacing the faulty patch panels sold to its
6 customers. CSC contends that, because Electro concedes liability and admits to the
7 amount of direct damages it owes,¹ the only issue for trial is the question of whether CSC
8 can also collect consequential damages, such as those arising from lost profits, loss of
9 goodwill, and harm to its reputation.
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11 **A. CSC's Summary Judgment Motion**

12 There is no genuine issue of material fact for trial on the question of Electro's
13 liability for breach of contract, breach of express warranty, and breach of implied
14 warranty of merchantability. In its Answer and in its response to the instant motion,
15 Electro concedes that it entered into a contract with CSC to sell patch panels, failed to
16 perform under the contract, and breached express and implied warranties. Answer ¶¶ 18-
17 28; *id.* at 3, ¶ A; Resp. at 2. Electro further admits that it is liable to CSC for direct
18 damages in the amount of \$534,370.55. Resp. at 2. Because there are no facts in dispute
19 as to Electro's liability on these three claims, or the resulting amount of direct damages,
20 the court grants summary judgment in favor of CSC on its claims of breach of contract,
21 breach of express warranty, and breach of implied warranty of merchantability, and
22 awards direct damages in the amount of \$534,370.55.
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27 ¹Although Electro does not oppose CSC's motion, the court still applies the standards of
28 Fed. R. Civ. P. 56. *See Henry v. Gill Indus., Inc.*, 983 F.2d 943, 949-50 (9th Cir. 1993). Thus,
the court determines if CSC's papers are sufficient to demonstrate that there is no genuine issue
of material fact and judgment is appropriate as a matter of law. *See id.* at 950.

1 The court denies summary judgment on CSC's remaining claims of unjust
2 enrichment and negligent misrepresentation. In its motion, CSC references Electro's
3 admission of fault in the most general sense, without reference to any of the five causes
4 of action enumerated in its Complaint. In response, Electro simply refers to its Answer,
5 which admits liability as to the three above-listed claims, but denies fault as to CSC's
6 additional claims of negligent misrepresentation and unjust enrichment. See Answer ¶¶
7 30-35. CSC provides no evidence to suggest an absence of material fact as to these latter
8 claims for which it bears the ultimate burden of proof at trial. Without more, the court
9 concludes that summary judgment is inappropriate on CSC's claims of negligent
10 misrepresentation and unjust enrichment.

12 **B. CSC's Request for Partial Judgment Under Rule 54(b)**

13 In addition to requesting adjudication of its claims, CSC moves for an "immediate"
14 entry of partial judgment so that it may collect on the \$534,370.55 that the court has now
15 ruled Electro owes in direct damages. Under Rule 54(b), the court can enter a "final
16 judgment as to one or more but fewer than all of the claims" in an action involving
17 multiple claims if it determines "that there is no just reason for delay." Fed. R. Civ. P.
18 54(b). The effect of an entry of partial judgment is to make such claims immediately
19 appealable. Because the rule raises the possibility of multiple final judgments, and
20 multiple appeals, courts enter partial judgment in relatively few cases. See Gausvik v.
21 Perez, 392 F.3d 1006, 1009 n.2 (9th Cir. 2004) ("[I]n the interest of judicial economy
22 Rule 54(b) should be used sparingly."). By contrast, the practice of entering judgment at
23 the close of a case promotes "judicial efficiency, avoids multiplicity of litigation and
24 minimizes delay by forbidding piecemeal disposition on appeal of what for practical
25 purposes is a single controversy." Am. States Ins. Co. v. Dastar Corp., 318 F.3d 881, 884
26 (9th Cir. 2003); see also Gausvik, 392 F.3d at 1009 n.2 ("[Rule 54(b)] was not meant to
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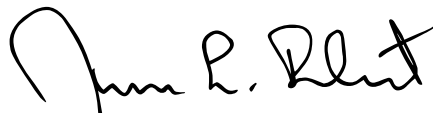
1 displace the ‘historic federal policy against piecemeal appeals.’”) (quoting Sears,
2 Roebuck & Co. v. Mackey, 351 U.S. 427, 438 (1956)).

3 The court declines to exercise its discretion to enter partial judgment. The court
4 has yet to consider CSC’s claims of unjust enrichment, negligent misrepresentation, and
5 its request for relief in the form of various consequential damages, such as loss of
6 goodwill. All of these remaining claims and forms of relief are related to, or arise from,
7 the same set of circumstances presented here. Accordingly, because CSC’s request
8 presents a risk of multiple judgments and multiple appeals on a case that should be
9 considered as a whole, the court will not enter partial judgment. Of course, if the parties
10 resolve the remaining claims, they may file a proposed consent judgment or the court will
11 enter a final judgment and close the matter.
12

13 **III. CONCLUSION**

14 For the reasons stated above, the court GRANTS CSC’s motion for summary
15 judgment (Dkt. # 10) on its breach of contract, breach of express warranty, and breach of
16 implied warranty of merchantability claims. The court DENIES summary judgment as to
17 the remaining claims and DENIES CSC’s request to enter partial judgment.
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19 Dated this 6th day of April, 2007.

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23 JAMES L. ROBART
United States District Judge
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